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Industrial property protection and technological innovation

A case study of the United Republic of Tanzania

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Industrial property protection and technological innovation

A case study of the United Republic of Tanzania

Study prepared by S.M. Wangwe
at the request of the UNCTAD secretariat

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FOREWORD

(i) The Committee on Transfer of Technology, in section V, paragraphs 15 and 16 of its resolution 28 (V), requested the UNCTAD secretariat, in co-operation with other institutions concerned, to "continue its valuable studies of policies and instruments on the promotion and encouragement of technological innovation in all countries, and particularly in developing countries, taking into account the comments and views expressed at the fifth session of the Committee". According to the same resolution, the secretariat's studies should, inter alia, consider the influence which the following factors may have in promoting and creating an innovative environment:

(a) Risk-taking in a changing, innovative environment;

(b) Incentives required at all levels of society, including those provided by systems of industrial property protection; and

(c) Linkages, including feedback mechanisms, between research and development activities reflecting practical local endowments and conditions.

(ii) The present study has been prepared in response to subparagraph (b) above and in pursuance of resolution 32 (VII) of the Committee on Transfer of Technology. It is a part of a wider research programme of the secretariat and focuses on the effectiveness of incentive schemes for promoting innovation. Besides the present study, a case study on the use of patents for the protection of technological innovation in selected Swedish firms has been prepared by the secretariat as well as two studies dealing with incentives other than the industrial property system: one on Spain and one on France.

(iii) The main purpose of the study is to assess the role of industrial property protection in the promotion of technological innovation in the United Republic of Tanzania. For the purpose of the study, industrial property protection is generally used to indicate the exclusive rights granted under the patent system and the incentive effect they might have on innovative activity, while innovation is taken to refer to the first introduction of new products and processes on a commercial scale into the market.

(iv) In order to understand the system under which industrial property protection is operating or is supposed to be operating in Tanzania, chapter I presents the existing and the recently enacted patent system in Tanzania. Chapter II analyses the actual practice of patenting in Tanzania in terms of number of patents granted and their distribution among different industries. Chapter III examines the industrial property protection system from the point of view of enterprises and some technological institutions. The analysis of the expected impact of industrial property protection on innovative activity is made on the basis of the responses obtained from a sample of 18 enterprises and research institutions.

(v) The study was prepared by Professor Samuel Wangwe of the University of Dar es Salam at the request of the UNCTAD secretariat.

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Chapter I

THE INDUSTRIAL PROPERTY PROTECTION SYSTEM IN TANZANIA

1. For the purpose of this study, both the outgoing patent system and the new patent system of the United Republic of Tanzania will be analysed. The outgoing system has been operating under the Patents Registration Ordinance (Cap. 217) of 1931 (revised in 1962). This system is described briefly in section A. The new system established under the Patent Act No. 1 of 1987 is described in section B.

A. The outgoing patent system

2. The outgoing patent system was based on the Patents Registration Ordinance (Cap. 217) of 1931. Under this Ordinance a patent is granted to the applicant provided the applicant pays the stipulated fees, describes what is to be patented and shows evidence that the applicant was granted the same patent in the United Kingdom not more than three years from the date of the application. In essence, Tanzania's patent system was fully pegged to the United Kingdom system and could not be characterized as an independently operating system. The requirement that the invention/innovation first be registered in the United Kingdom made it difficult for the public authorities to use the patent system to encourage domestic innovative activity and created an unnecessary roundabout for foreign applicants who might have registered their patents in countries other than the United Kingdom. This patent system is still operating in the country but arrangements are under way to begin implementing the new patent system for Tanzania, enacted in 1987.

B. The new patent system

3. The recently enacted patent system is contained in Patent Act No. 1 of 1987, which is meant to repeal and replace the Patents Registration Ordinance (Cap. 217) of 1931. The main objective of the new Act is to make better provision for the promotion of inventiveness and innovation, for the facilitation of the acquisition of technology on fair terms through the grant and regulation of patents, utility certificates and innovation certificates. The detailed regulations and operational procedures governing the use of Patent Act No. 1 of 1987 are in the process of being worked out. Since it should be operative soon, the main features of the Act are presented in the following sections.

1. Functions

4. The functions of the Patent Office should be:

(a) To grant patents;

(b) To promote inventiveness among nationals of Tanzania;

(c) To establish and operate a patent documentation centre for the purpose of dissemination of information on patents;

(d) To collaborate with other bodies whether local or foreign, whose functions relate to patent matters;

(e) To provide information on patented technology so as to facilitate transfer and acquisition of technology by Tanzania; and,

(f) To perform such other functions as are necessary for the furtherance of the objects of the Patent Act.

2. Patentability

5. An invention is patentable if it is new, involves an inventive step and is industrially applicable. In this context an invention is new if it bears the novelty attribute in that it is not anticipated by prior art. An inventive step involves an invention which would not have been obvious to a person skilled in the art on the date of the filing of the application. An invention is industrially applicable if it can be made or used in the technological sense in any kind of industry.

3. Right to patent

6. The Act stipulates that the right to patent belongs to the inventor and that inventions made in execution of commission or employment shall belong to the employer. However, it also provides for the working out of an equitable remuneration between employer and employee taking into account the importance of the invention and any benefit derived from the invention by the employer.

4. Term of patent

7. The Act states that the patent shall expire at the end of the tenth year after the date of the filing of the application. The term of the patent may be extended for a period of five years.

5. Contractual licences

8. The Act establishes the rights of the licensees and those of the licensor and lays down the prohibited terms in licence contracts.

6. Compulsory licences

9. The Act stipulates that compulsory licences may be issued for non-working or for unsatisfactory working, for interdependent patents or for products deemed of vital importance.

7. Utility certificates

10. An invention, the Act states, is eligible for a utility certificate if it is new and industrially applicable. Utility certificates may be granted even if the invention falls short of novelty. An examination as to substance need not be carried out before a utility certificate is issued.

Chapter II

THE PATENT SYSTEM IN PRACTICE

11. Patenting in Tanzania is still operating on the basis of the Patents Registration Ordinance (Cap. 217), which should have been repealed by the Patent Act No. 1 of 1987. Thus up to the end of 1989 the Patent Office was granting patents following the Patents Registration Ordinance (Cap. 217). For this study a sample of three years was selected (i.e. 1980, 1985 and 1987) and the patents granted during these years were analysed in respect of source of applications and types of industries for which the patents were granted.

A. Patents granted

12. The number of patents granted over the 1980-1987 period is presented in table 1. It is clear that the number of patents granted in Tanzania is very small compared to the numbers granted in the more developed economies. The number of patents registered peaked at 93 in 1980 and recorded a low figure of 16 in 1985.

Table 1

Number of patents granted: 1980-1987

Year	Number of patents
1980	93
1981	41
1982	30
1983	56
1984	37
1985	16
1986	45
1987	21

Source: Patent Office, United Republic of Tanzania.

13. The patents registered during the sample years are all foreign as shown in table 2. Eighty per cent of all the patents registered during the period under review originated from four countries: the United States, the United Kingdom, the Federal Republic of Germany and Switzerland. It is notable that patents owned by nationals of third world countries account for only 3 per cent of all patents registered in 1980, 1985 and 1987.

Table 2

Patents by nationality

Nationality	1980	1985	1987	Total	%
India	1	0	0	1	0.8
Italy	3	0	0	3	2.3
United Kingdom	20	6	2	28	21.5
Switzerland	16	5	6	27	20.8
Japan	1	1	0	2	1.5
United States	24	3	6	33	25.4
Sweden	1	0	0	1	0.8
France	5	0	0	5	3.8
Canada	1	0	0	1	0.8
Hungary	3	0	1	4	3.1
Belgium	2	0	0	2	1.5
Germany, Fed. Rep.	14	1	2	17	13.1
Bahamas	1	0	0	1	0.8
Australia	1	0	2	3	2.3
Zimbabwe	0	0	2	2	1.5
	93	16	21	130	100

Source: Patent Office, United Republic of Tanzania.

14. The absence of Tanzania-owned patents is rather striking. However, it was found that, since the inception of the system, only one Tanzania-owned patent has been registered in Tanzania while two have been registered in Sweden and three have been registered in the United Kingdom. Presumably this is a reflection of the fact that the patent system was not meant to encourage innovators and inventors in Tanzania. The recently enacted patent system is expected to correct this defect.

B. Types of industries patented

15. The patents registered in Tanzania in 1980, 1985 and 1987 are predominantly chemical industry based, as shown in table 3. The group of chemical industries accounts for about 84 per cent of all patents registered. Within the chemical industry, pharmaceuticals are dominant followed by agricultural chemicals. The category referred to as instrumentation is also chemical-industry-related as these inventions/innovations appear to be owned by the chemical industry. These instruments are largely apparatus which go along with or facilitate the manufacture of various chemical compounds.

Table 3

Patents granted by sector: 1980-1987

Sector	1980 Number	%	1985 Number	%	1987 Number	%	Total Number	%
Mechanical engineering	2	2.2	0	0	0	0	0	1.5
Industrial chemicals	5	5.4	0	0	1	4.8	6	4.6
Agricultural chemicals	15	16.1	5	31.3	5	23.8	25	19.2
Pharmaceuticals	56	60.2	10	62.5	12	57.1	78	60.0
Instrumentation	5	5.4	1	6.2	0	0	6	4.6
Metal products	2	2.2	0	0	0	0	2	1.5
Food and beverages	3	3.2	0	0	1	4.8	4	3.1
Building materials	5	5.4	0	0	2	9.5	7	5.4
Total	93	100	16	100	21	100	130	100

Source: Patent Office, United Republic of Tanzania.

16. These patents are largely held by transnational corporations which are mainly importing the products into the country while manufacturing is located elsewhere. Most of those which have set up production facilities are mixing various chemicals while the manufacture of the compounds is taking place abroad.

17. Most of the patents belong to technology-based enterprises. The industries involved in the patenting activity seem to be technologically dynamic as evidenced by the fact that many patents are improvements and inventive steps over the previous registrations.

Chapter III

INDUSTRIAL PROPERTY PROTECTION: A VIEW FROM THE LOCAL ENTERPRISES

18. The prevalence of foreign-owned patents and the striking absence of local firms in the patents register calls for a closer look at innovation in Tanzania and an analysis of the views and attitudes of entities involved in it.

19. In order to examine the patent system from the point of view of enterprises and other entities (including R & D institutions) actually operating in Tanzania a sample of 18 firms was selected. The firms selected for study are engaged in a variety of industrial activities as shown in table 4. The sample consists of 15 firms from 6 different industries and 3 local R & D institutions (see table 5). All the R & D institutions are publicly owned while the other 15 enterprises are mainly private (10) and the rest (5) are public owned.

Table 4

The nature of firms/enterprises surveyed

Main activity	Number of
Chemical industry	3
Soap and detergents	1
Textile and garments	1
Leather products	1
Metal working	6
Food and beverages	3
Technological research and development institutions	3
Total	18

Table 5

Ownership pattern of sample enterprises

Foreign	3
Local private	7
Public	8
Total	18

A. Awareness of the patent system

20. The study investigated the extent to which the local firms are aware of the local patent office as a first step towards making use of its services. As shown in table 6 about 56 per cent of all the enterprises were not aware of the existence of the patent office. All the three local R & D institutions were aware of the patent system, probably because it is mentioned in the Acts establishing the institutions. All the foreign enterprises were aware of the patent office but did not make use of its services. These findings reinforce the earlier observation that the patent office was set up not so much to serve local innovative efforts as to serve foreign innovators in Tanzania. It is hoped that the recently enacted patent system will redress this anomaly.

Table 6

Awareness of the patent office

Institutions' awareness	Number of enterprises/institutions
1. Aware of it since establishment of the enterprises/institution	5
2. Institutions which became aware of it subsequently	3
3. Not aware at all	10
Total	18

B. Types of innovations

21. In studying the 18 sample firms, information was sought on the type of innovations actually taking place or which have been carried out recently. This information is important in facilitating an assessment of the extent to which the patent system could cater for the type of inventions which are actually being carried out in the country.

22. The types of innovations which are actually carried out in the sample firms are shown in table 7. These are primarily minor modifications (about 44 per cent of the firms) and production of spare parts to replace originally imported parts (in another 22 per cent of the firms). In 28 per cent of the firms major innovations consist of substitution of locally available inputs for imported inputs (e.g. locally available vegetable oils in place of imported oils). These are hardly likely to qualify for granting of patents. The only category of innovations which could be granted patents are those relating to the design of new equipment. There are only two firms engaged in such activities out of the 18 interviewed for this study. Yet, the results of such activities would have to be subjected to patent examination to determine whether they qualify for patenting or not.

Table 7

Nature of innovations actually carried out recently

Type of innovation	Number of firms/institutions
1. Minor modifications to the production formulae or of imported technology	7
2. Imitating spare parts	4
3. Designing of equipment	2
4. Use of local inputs as substitutes for imported inputs	5
Total	18

23. However, the findings on the nature of innovations actually taking place suggests that most of them may not be patentable. This implies that in order to encourage innovative activity starting from the present low level of technological innovation it will be necessary to reward the minor innovations through less demanding awards like utility certificates or through incentive mechanisms other than patents.

C. Adopting innovations from other sources

24. One function of the patent system is to provide information about available technologies and in the process encourage adoption of technologies developed by others. In the field survey the extent of adoption of technological innovations made by other institutions or firms was investigated. The findings indicated that two R & D institutions (TEMDO 1/ and TIRDO 2/) had successfully disseminated five innovations to enterprises which were now operating them on commercial scale. These technological innovations are a centrifugal water pump, a maize sheller, an oil expeller, a sugar cane crusher, and a grain cleaner and thresher.

25. This technology transfer was paid for in various forms. In some cases the proceeds from commercial sales were shared between the adopter and the innovator, and in other cases the adopter paid a lump sum of money to cover for the rest of the design and costs of transferring the know-how.

26. Overall however, the incidence of technological diffusion among enterprises was very low. In this context, the field-work also revealed that there was no formal system for disseminating information about technological innovations and improvements. From the findings on the limited technological diffusion among enterprises, it appears that the patent system or other systematic mechanism for the dissemination of technological information would play an important role.

D. Methods of protection in use

27. In the near absence of an effective patent system the question which arises is how do firms protect whatever innovations they make. In the field survey this question was asked and the findings are shown on table 8. The four firms which are already granted patents under the Patents Registration Ordinance of 1931 (with minor revisions in 1962) reported that they use the patents to protect their innovations. Among the four firms only one was local and it had negotiated for a licence for a patent which is owned by a firm registered and operating in the United Kingdom. Most enterprises (44 per cent) used trade marks on their products. However, most of such firms admitted that they were using fairly standard and known technology and that there was not much unique technology in the process for producing their products. Trade marks were used as a means of safeguarding against poor quality imitations and maintaining uniform product quality.

Table 8

Methods used to protect innovations

Method used	Number of firms
Patenting	4
Trade marks	8
Secrecy	1
None	5
Total	18

28. When asked to indicate which methods of industrial property protection the firms would prefer, 14 firms responded. The responses indicate that patents were ranked among the top two methods by 57 per cent of the respondents, followed by registered designs (43 per cent) and trade marks (36 per cent) and secrecy (29 per cent). Taking the top three preferences again the leading preferred methods are patents (71 per cent) and registered designs (71 per cent), followed by trade marks (43 per cent) and secrecy (43 per cent).

E. System of rewarding innovators

29. The system of patents is only one of various methods of rewarding innovators; there may be other means. At firm level, the field survey addressed itself to this question. Out of the 18 firms, 7 had some system (formal or informal) of rewarding innovators. In most cases, however, the arrangements were rather ad hoc and not systematically incorporated in the activities and schemes of the enterprises.

30. At national level the Tanzania Award for Scientific and Technological Achievement (TASTA) is given to individuals or institutions in recognition of their achievements in the application of science and technology to the socio-economic development of the country. The aim of the Award is to encourage creativity and initiative for greater scientific and technological

achievements and to foster the utilization of such achievements for the purpose of promoting and accelerating socio-economic development of the country. TASTA has been administered under the Tanzania National Scientific Research Council, which has now been upgraded to the National Science and Technology Commission.

31. The reward for technological innovation through TASTA covers very few awards. In a year two or three awards only may be given out. In order to qualify for the award, the achievement must represent a scientific or technological invention, discovery, innovation or adaptation. The payment given depends on the importance of the innovation. Being annual, this award has not really been internalized in the daily operations and decision-making of individuals and institutions. It cannot be a substitute for a system which rewards innovators as innovations are carried out. Moreover, the magnitude of the TASTA awards is small (in the range of $US 500-2,000), which is not enough to recover a substantial part of costs of research and development.

Chapter IV

SUMMARY AND CONCLUSION

32. This study set out to examine the role of industrial property protection in the promotion of technological innovation in Tanzania.

33. The existing patent system is based on the Patents Registration Ordinance (Cap. 217) of 1931 (revised in 1962). Under this Ordinance, registration of a patent is granted to the applicant provided the applicant pays the stipulated fees, describes what is to be patented and shows evidence that the applicant was granted the same patent in the United Kingdom not more than three years from the date of the application. In essence, Tanzania's patent system has been fully pegged to the United Kingdom system and cannot be said to be operating independently.

34. The recently enacted patent system is contained in Patent Act No. 1 of 1987, which, once it is implemented, will repeal and replace the Patents Registration Ordinance (Cap. 217) of 1931 (revised in 1962). The main objective of the new Act is to make better provision for the promotion of inventiveness and innovation, and for the facilitation of the acquisition of technology on fair terms through the grant and regulation of patents, utility certificates and innovation certificates.

35. Patenting in Tanzania has up to now been on the basis of the Patents Registration Ordinance (Cap. 217). The Patent Office continues to grant patents on the basis of the outgoing Patents Registration Ordinance (Cap. 217).

36. The number of patents granted over the period 1980-1987 is presented in table 1. It is clear that the number of patents granted in Tanzania is very small compared to the numbers granted in the more developed economies. The number of patents registered peaked at 93 in 1980 and recorded a floor figure of 16 in 1985.

37. Four countries account for over 80 per cent of all the registered patents. It is notable that patents owned by nationals of third world countries account for only 3 per cent of all patents registered in 1980, 1985 and 1987.

38. The absence of Tanzania-owned patents is rather striking. Presumably this is a reflection of the fact that the patent system was not meant to cater for Tanzanian innovators and inventors since an applicant had to register in the United Kingdom as a pre-condition for being granted a patent in Tanzania.

39. The patents registered in Tanzania in 1980, 1985 and 1987 are predominantly chemical industry based. Within the chemical industry pharmaceuticals are dominant followed by agricultural chemicals.

40. These patents are largely owned by transnational corporations which are mainly importing the products into the country while manufacturing takes place abroad.

41. About 56 per cent of the enterprises interviewed for this study were not aware of the existence of the Patent Office. All the foreign enterprises were aware of the Patent Office and had made use of its services. These findings reinforce the earlier observation that the Patent Office has so far mainly served foreign enterprises and foreign patent owners.

42. The innovations which are actually performed in Tanzania are primarily minor modifications to already existing inventions (about 44 per cent of the firms) and production of spare parts to replace originally imported parts (in another 22 per cent of the firms). In 28 per cent of the firms the substitution of locally available inputs for imported inputs is considered as a "major" local innovation (e.g. locally available vegetable oils in place of imported oils). However, these are hardly likely to qualify for granting of patents.

43. The findings on the nature of innovations actually taking place suggests that most of them may not be patentable. This implies that in order to encourage innovative activity starting from the present low level of technological innovation it will be necessary to reward the minor innovations through less demanding awards like utility certificates or through incentive mechanisms in addition to patents.

44. The incidence of technological diffusion among enterprises was very low. In this context, the field-work also revealed that there was no formal system of disseminating information about technological innovations and improvements.

45. Out of the 18 firms, 7 had some system (formal or informal) of rewarding innovators. In most cases, however, the arrangements were rather ad hoc and were not systematically incorporated in the activities and schemes of the enterprises.

Notes

1/ Tanzania Engineering and Manufacturing Design Organization.

2/ Tanzania Industrial Research and Development Organization.

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